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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

FEB 16 2005

GARY M. BLAIR, Executive Officer
BY *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

RECEIVED
05 FEB 16 11:22 AM
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SANTA MARIA DIVISION

~~PROPOSED~~ REDACTED VERSION

12 THE PEOPLE OF THE STATE OF CALIFORNIA)

13 Plaintiff,)

14 v.)

15 MICHAEL JOE JACKSON,)

16 Defendant.)

No. 1133603

PEOPLE'S TRIAL BRIEF

ON ADMISSION OF

CO-CONSPIRATORS' STATEMENTS

DATE: ~~February 22, 2005~~

TIME: ~~8:30 a.m.~~

DEPT.: ~~SM-2 (Melville)~~

~~FILED UNDER SEAL~~

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20 This trial brief is submitted pursuant to the provisions of Evidence Code section 403.
21 The proffered evidence and legal authority set forth in this brief is offered in accordance with
22 subsection (b) to satisfy the preliminary fact finding requirements and to establish the
23 sufficiency of the evidence to justify the exercise of the court's discretion on the order of proof
24 as outlined in section 403(b) and (c) of that section.

25 Count 1 of the Indictment alleges the defendant Michael Jackson conspired with five
26 named co-conspirators to commit the crimes of Extortion, Child Abduction and False
27 Imprisonment. The Grand Jury found Jackson and the named co-conspirators committed 28
28 separate overt acts in furtherance of the conspiracy.

1 Conspiracies are rarely hatched in public, and direct evidence of their formation is
2 seldom available. An intent to agree to commit a crime, like other elements of the inchoate
3 crime of conspiracy, “may . . .” be inferred from the conduct, relationship, interests, and
4 activities of the alleged conspirators before and during the alleged conspiracy. [Citations.]”
5 (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1135, quoting *People v. Cooks* (1983) 141
6 Cal.App.3d 224, 211.” (*People v. Herrera* (2000) 83 Cal.App.4th 46, 64.)

7 The requirement of an overt act is an element of the crime of conspiracy in the sense
8 that the act of one conspirator is the act of all. Each is responsible for everything done by his
9 confederates, which follows incidentally in the execution of the common design as one of its
10 probable and natural consequences. Thus, it is not necessary that a party to a conspiracy be
11 present and personally participate with his con-conspirators in all or in any of the overt acts.
12 *People v. Morante* (1999) 20 Cal.4th 403, 416. The overt act, although necessary to establish a
13 punishable conspiracy, need not itself be criminal. *People v. Russo* (2001) 25 Cal.4th 1124,
14 1135.

15 Although there seems to be a split of opinion as to whether prime facie proof (*People v.*
16 *Jourdain* (1980) 111 Cal.App.3d 396,405; *People v. Saling* (1972) 7 Cal.3d 844) or
17 preponderance of the evidence (*People v. Herrera* (2000), supra, at p.64) is required to
18 establish the preliminary factual finding for a conspiracy, once established, the testimony
19 concerning a co-conspirator’s statements in furtherance of conspiracy, though made in
20 defendant’s absence, are admissible as an exception to the Hearsay Rule. It is well recognized
21 that the order of proof is within the sound discretion of the trial court.

22 In this case, the agreement itself can be inferred from the participation of the named
23 conspirators (defendant among them) in their coordinated efforts to keep the █████ family
24 away from public attention even before the February 6, 2003 broadcast of Martin Bashir’s
25 “Living with Michael Jackson” across the United States. It may be inferred from their efforts
26 to coerce the participation of the █████ family members in a pro-Jackson “rebuttal video” to
27 counter the public relations disaster created by the Bashir documentary broadcast.

28 The goals of the conspiracy were simple: – isolate and control the █████ family from

1 the media; - obtain a pro-Jackson rebuttal interview to be incorporated into the planned
2 Jackson rebuttal network program to be aired on February 20th.

3 The evidence demonstrates prompt, coordinated action by those most intimately
4 associated with defendant in his business and professional life to mitigate the public relations
5 catastrophe that had befallen him.

6 Specifically, the evidence of that conspiracy can be found in several different sources:

7 1. Association. Long-standing and well-documented business and social
8 relationship between Jackson and the named co-conspirators.

9 2. Motive. It is Jackson and Jackson's career and financial future that is rocked by
10 the Martin Bashir documentary "Living with Michael Jackson.

11 3. Conduct and statements of Michael Jackson - [redacted] trip to Miami [redacted]

12 [redacted]
13 [redacted]
14 [redacted]
15 [redacted]

16 4. The return flight.

17 [redacted]
18 [redacted]
19 [redacted]
20 [redacted]

21 5.

22 [redacted]
23 [redacted]
24 [redacted]

25 6. The [redacted] escape.

26 [redacted]
27 [redacted]
28 [redacted]

7. [redacted] conversation.

[redacted]

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8. The rebuttal film. It was done by his personal videographer. It was originally to be done on his ranch. It was done in part for inclusion in a planned network T.V. rebuttal. The statements made are directly beneficial to Michael Jackson. He benefited personally and financially.

9. Telephone monitoring at the Ranch. [REDACTED]

10. [REDACTED]

11. [REDACTED]

12. [REDACTED]

13. The telephone records analysis. This analysis established two things: [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 **II. PROFFERED EVIDENCE**

9 Motive. There is compelling evidence that the Martin Bashir documentary, "Living
10 with Michael Jackson" was a public relations disaster. The outcry galvanized Michael
11 Jackson, his co-conspirators and other advisors into a "damage control" mentality to mitigate
12 the disastrous effects the program promised to have on what remained of the defendant's
13 personal reputation, his financial fortune and his musical career—not to mention the business
14 ventures of some of those associates, the viability of which depended upon the viability of
15 Jackson's own reputation and career.

16 [REDACTED]
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4 [REDACTED]

5 Team Jackson

6 Though mere association with the perpetrator of a crime is not sufficient to prove
7 criminal conspiracy, the entire conduct of the parties, their relationship, acts and conduct,
8 during and after a crime, may be considered to determine the nature of the conspiracy. *People*
9 *v. Lewis* (1963) 222 Cal.App.2d 136, 144; *People v. Hardeman* (1966) 244 Cal.App.2d 1, 41;
10 *People v. Lynam* (1968) 261 Cal.App.2d 490, 502.

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To Isolate and Control

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It would be beyond unreasonable to conclude that it is "more probable than not" that these activities, conversations, preparations and documents do not establish the existence of a concerted, coordinated and planned conspiracy as set forth in the Indictment.

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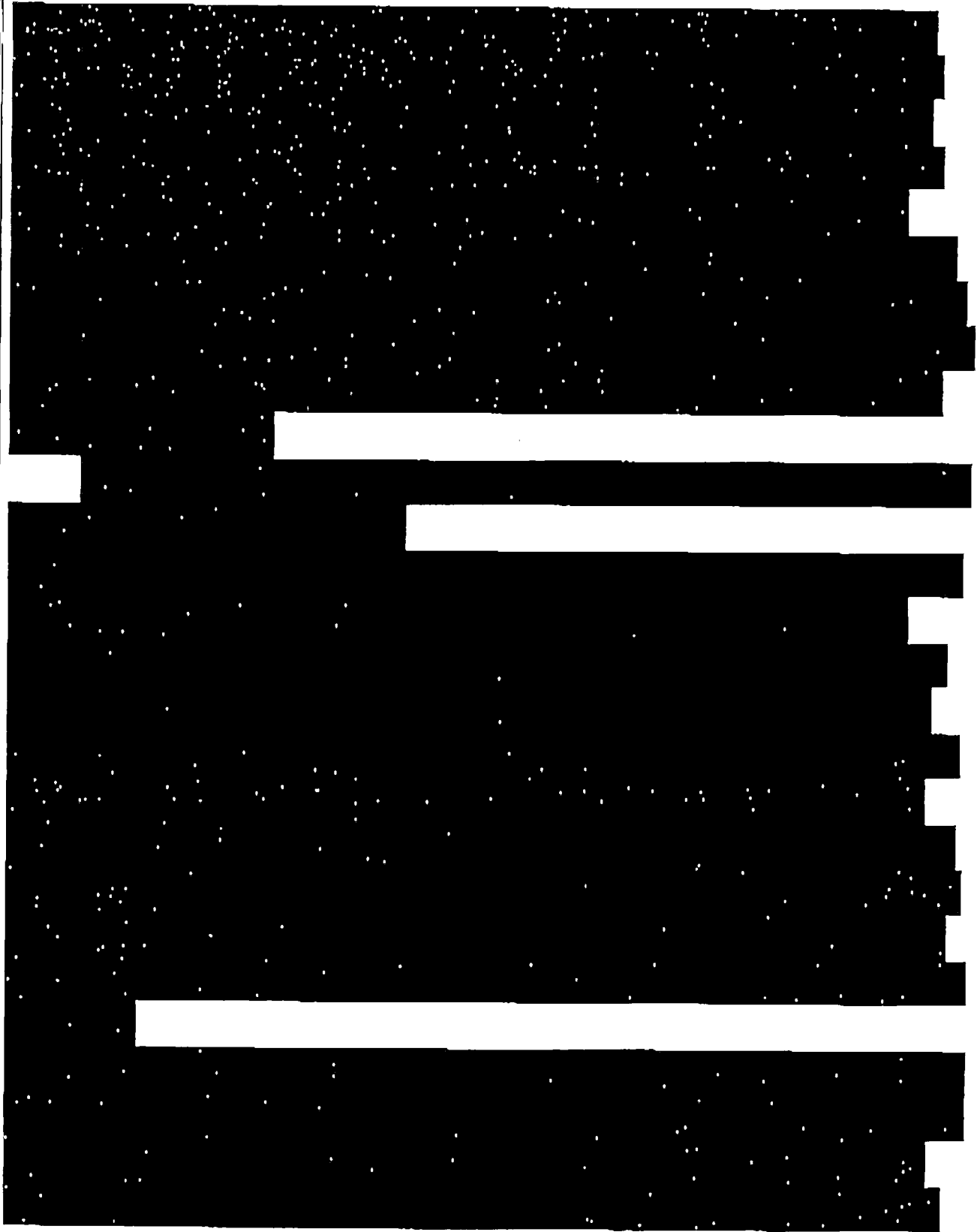
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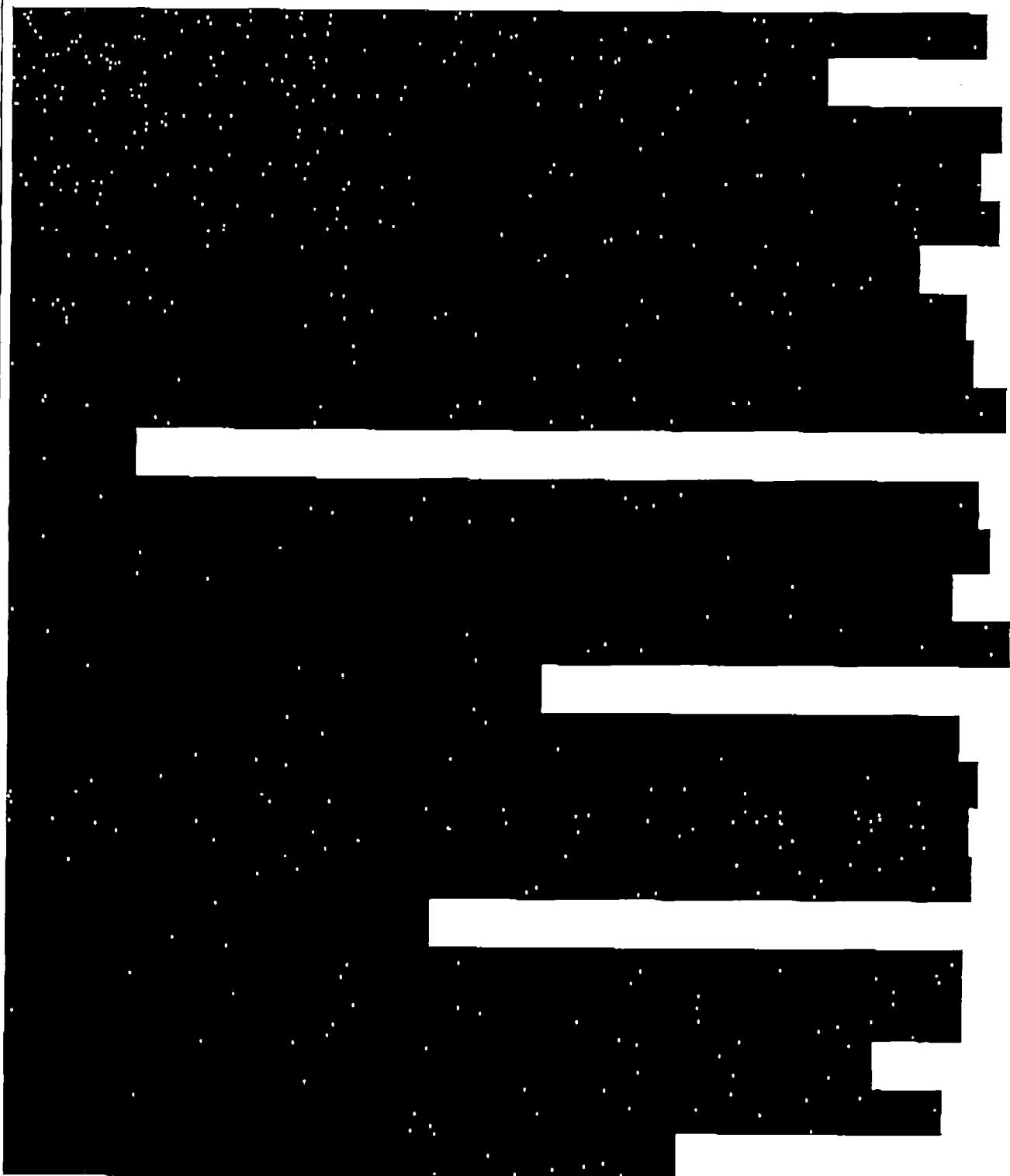
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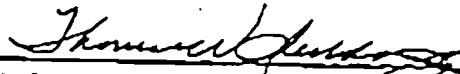
CONCLUSION

26
27 Whether one uses the *Saling* "prima facie" evidence standard to establish a conspiracy
28 or the preponderance of evidence standard articulated in *Herrera*, here the proffered proof is

1 well beyond that needed to satisfy the preliminary fact standard of Evidence Code section
2 403(b) to allow the court to exercise its discretion as to the order of proof as set forth in
3 Evidence Code section 403(c)(1)(2) as to the admissibility of co-conspirators' statements.

4 DATED: February 16, 2005.

5 Respectfully submitted,

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7 
8 THOMAS W. SNEDDON, JR.
9 DISTRICT ATTORNEY

10 Attorney for Plaintiff
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PROOF OF SERVICE

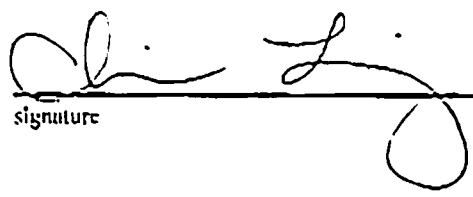
STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA } SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On February 16, 2005, I served the within REDACTED VERSION of PEOPLE'S TRIAL BRIEF ON ADMISSION OF CO-CONSPIRATORS' STATEMENTS; on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, BRIAN OXMAN, by personally delivering a true copy to Mr. Sanger's office and by faxing a true copy to Mr. Mesereau at his confidential fax number in Santa Maria, and to Media's counsel at the fax number shown with their address on the attached Service List, and then by causing to be mailed a true copy to each counsel at that address.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Barbara, California on this 16th day of February, 2005.


signature

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